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*In the Supreme Court of Pennsylvania—At Pittsburgh.*EAGON vs. CALL.¹

1. Where A sells B an unsound horse, and there is no express warranty, and no fraud, the unsoundness of the animal amounts to neither want nor failure of consideration, and is no ground of defence against the payment of the price agreed upon.
2. The rule of the civil law, that a sound price implies a warranty that the article sold is sound, is not a rule of the common law.
3. It cannot be generally maintained, that where the buyer has had an opportunity of examining the article, there is any engagement implied in the contract of sale, that the seller warrants against latent defects, unknown alike to himself and to the purchaser. Certainly there is no such engagement in the sale of such an article as a horse.

Error to the Common Pleas of Greene county.

Sayers and Gapen, for plaintiff in error.

Lindsey and Buchanan, contra.

The opinion of the court was delivered by

STRONG, J.—The plaintiff sued upon a bill single, given to secure the price of a mare, sold by him to the defendants. Among other pleas, “want of consideration” for the bill was set up, and an attempt was made to establish it by proof that the mare was unsound at the time of sale. It was in reference to this defence that the learned judge of the Court of Common Pleas instructed the jury, that “to make a defence against the payment of the note, it was not necessary to establish the fact that Eagon (the plaintiff) knew the mare was unsound. If unsoundness is made out, then the consideration of the note has failed, and on this equitable ground the defendant will be released from the payment of it.” The instruction thus given is assigned for error. It is to be observed that it does not put the defence upon the ground of fraud in the contract, nor of express warranty by the vendor, but exclusively upon the bad quality of the thing sold. Now, that the unsoundness of the

¹ We are indebted to the Pittsburgh Legal Journal for this case.—*Ed. Am. L. Reg.*

article sold amounts neither to want or failure of consideration, is easily demonstrable. *Want* of consideration can only be where the promisee parts with nothing in exchange for the promise. The consideration *fails* when the promiser does not get that which the promisee agreed to give as a motive for the promise. But in the absence of warranty, the soundness or unsoundness of the subject matter of the sale has nothing to do with the consideration. There is no relation of confidence between the buyer and the seller. In the absence of agreement by the seller, the purchaser takes at his own risk as to quality. The vendor of a chattel warrants the title, and, in some cases, the species, but nothing more, consequently when the title passes, the vendee has all that, under the contract of sale, the vendor engaged to give him, and therefore, the entire consideration for his promise. There is, then, no failure. The rule of the civil law, that a sound price implies a warranty that the article sold is sound, is not a rule of the common law. I am not now speaking of cases of sale by sample, nor of cases in which the law is said to imply a warranty that the goods sold are the same in specie with those mentioned in the contract of sale. *Borrekins vs. Bevan*, 3 Rawle 37, is one of the latter, though even these cases are, perhaps, rather adjudications of what shall be considered evidence of an express engagement, than extensions of the doctrine of implied warranty. There are also to be found decisions in which it has been held that the law implies in the case of a sale of goods by a manufacturer that they are of a merchantable quality, and other decisions ruling that where goods are sold for a particular use, there is an implied warranty that they are fit for that use. But it cannot be generally maintained that when the buyer has had an opportunity of examining the article, there is any engagement implied in the contract of sale, that the seller warrants against latent defects, unknown alike to himself and to the purchaser. Certainly there is no such engagement in the sale of such an article as a horse. The civil law doctrine would produce endless embarrassments, if applied to the extended operations of modern trade. It always involves an inquiry into the question whether the price agreed to be paid was or was not a sound price, and, of course, leaves the measure of obligation

of the contract to be determined by the jury. But if there be no such engagement by the vendor, then the buyer, who has got an unsound or defective article cannot assert that he has failed to obtain all that for which he has contracted to pay. Mere inadequacy of consideration, without warranty, or fraud, is no defence to the payment of a bill or note, given for the purchase money of goods, and the unsoundness or defective quality of the article sold relates only to the inadequacy of the consideration.

There was error, therefore, in the instruction given to the jury by the court below. If the contract of sale was not fraudulent; if there was no deceit on the part of plaintiff, to which knowledge by him of the defect was essential, and if there was no express warranty, the fact that the mare was unsound constituted no defence to the action.

It is unnecessary to notice the second and third assignments of error, in detail. What we have already said is sufficient to express our views of them.

The judgment is reversed and a *venire de novo* is awarded.

In the Supreme Court of Pennsylvania—At Harrisburg.

THE NEW YORK AND WASHINGTON TELEGRAPH COMPANY vs. ANDREW DRYBURG.

1. It is the duty of the Telegraph Company to transmit the messages just as they are delivered to them. Should they not do so, they will be liable for any loss that may ensue by the wrong transmission.
2. Telegraph Companies, like other corporations, may be sued in their corporate character, for damages arising from neglect of duty.
3. Where the sender of a telegraphic message wrote "two *hund* bouquets," meaning two *hand* bouquets, and the agent of the Telegraph Company translated it "two *hundred*" bouquets, and so delivered the message to the person addressed, by which error he caused loss and damage: *Held*, that the person to whom the erroneous message was sent, could maintain an action in his own name, and that the company were liable for the loss or damage caused by such error in transmitting.
4. *Query*, whether the Telegraph Company should not be regarded as the agent of both the sender of and the person to whom the dispatch is addressed.
5. A servant, as such, cannot be charged for neglect, but the principal shall be charged for it; but for a misfeasance an action will well lie against the servant.

Error to the District Court of Philadelphia.